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In the Supreme Court of the United States

October Term, 1984

JESSE J. JOHNSON,
Petitioner,

V.

MERIT SYSTEMS PROTECTION BOARD,
Respondent.

On Writ of Certiorari to the United State Court of Appeals For the Federal Circuit

BRIEF FOR THE PETITIONER

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71pp

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Federal Circuit has jurisdiction pursuant to 28 U.S.C. 1295, 5 U.S.C. 7701, and 5 U.S.C. 7703 to review decisions of the Merit Systems Protection Board decided in violation of the United States Constitution, federal laws, statutory and regulatory procedures governing voluntary constructive, dejure or involuntary retirement of federal employees.

Whether the MSPB violated petitioner JOHNSON'S right to due process and equal protection of the U.S. Constitution by: (a) imposing the burden of proof on petitioner JOHNSON in his adverse action of coercive involuntary retirement at the hearing before the MSPB in violation of the fifth and fourteenth amendments to the U.S.

Constitution; of the 28 U.S.C. 1295 and of 5 U.S.C. 7701, 7703; 5 U.S.C. 8334; and 5 C.F.R., Chapter 75, 771.205; 5 C.F.R. 831-501 (a)(b); 5 C.F.R. 1201. 56; and 5 C.F.R. 1201.118.

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The decision of the U. S. Court of Appeals for the Federal Circuit. (A1). The decision of the Federal Circuit on JOHNSON'S motion for rehearing or rehearing In Banc or Directed Verdict for appellant, denied. (A2).

JURISDICTION

The decision of the U.S. Court of Appeals for the Federal Circuit (hereafter "Federal Circuit") was entered on November 13, 1984. (A1). The jurisdiction of the court rests on 28 U.S.C. 1254 (1). The decision for motion for continuance in Petition for rehearing or rehearing In Banc or Directed Verdict entered; denied 9 January 1985. (A2), (A3), (A4).

STATUTES INVOLVED

The authority relied upon includes the fifth and fourteenth amendments to the U.S. Constitution, 5 U.S.C. 7701, 5 U.S.C. 7703, 5 U.S.C. 8334, 5 U.S.C. 8347, 28 U.S.C. 1295 (a)(9), 5 C.F.R. 831-501 (a)(b), 5 C.F.R. 1201-56, 5 C.F.R. 1201.118, 5 C.F.R. 752 and 5 C.F.R. (Ch. 75), 771.205. (For excerpts, see Appendix A5 through A11).

I. STATEMENT

Petitioner JOHNSON contends that the Federal Circuit and the Merit Systems Protection Board (hereafter) MSPB) have jurisdiction to review his case and all others like it, Lindahl v. Office of Personnel Management (83-5954) 718 F.2d. 391; and has decided favorably by the Federal Circuit Court in Bronger v. Office of Personnel Management 740 F.2d. 1552, by authority of statutes

listed above.

The congressional intent, constitutional issues, judicial review, federal laws, legal precedents, voluntary, de-jure, constructive or involuntary retirement issues; the health issue, wrong counselling, wrong facts, violation of due process, equal protection, and other related issues in Lindahl and Bronger are almost identifical to those in Petitioner JOHNSON'S case. (See 83-5954).

Lindahl's case is now pending decision by the Supreme Court of the United States.

Petitioner JOHNSON, therefore, strongly contends that the Federal Circuit and MSPB have adequate judicial appellate authority to have decided in favor of Petitioner JOHNSON'S case as was decided in Bronger v. OPM, as proven

in this petition and in his whole record of 13 years.

Petitioner JOHNSON agrees overwhelmingly with the brilliant arguments, congressional intent, citations, property and contract issues, facts, laws, constitutional and judicial issues as set forth in Lindahl and Bronger cases, and the five Amici Curiae briefs relating to the Lindahl case.

Petitioner JOHNSON'S medical records, which are not in dispute, are available in the Federal Circuit Court's records. Disability is not an issue per se. Medical records are evidence which prove coercion to involuntary retirement; and violations of laws listed herein.

THE COURT BELOW

The court below obstructed justice, violated due process and equal protec-

tion, abused discretion, decided against precidents of about 28 years, and made serious error when it affirmed the MSPB opinion and order.

Petitioner JOHNSON filed a motion for rehearing or rehearing In Banc or Directed Verdict on December 14, 1984. On December 17, 1984, respondent was allowed 40 days to reply to this motion which would expire on January 24, 1985. The Lindahl case came to the attention of Petitioner JOHNSON on about December 25, 1984. On January 5, 1985, Petitioner JOHNSON filed by certified mail, a motion for stay or continuance, pending U.S. Supreme Court decision on Lindahl case, because of similar laws, facts, and issues to Petitioner JOHNSON'S case; however, the Federal Circuit received Petitioner JOHNSON'S motion for continuance on 11 January 1985, and

apparently rushed and backdated a hurried decision denying continuance and rehearing without requiring the respondent to reply to Petitioner JOHNSON'S motion for rehearing and continuance prior to end of 40 days allowed. Petitioner JOHNSON considers this and the whole decision, obstruction of justice, violation of due process and equal protection. This is the same type of violations to which Petitioner JOHNSON has been subjected by the agency and the MSPB for more than 13 years. Thus the reason he is in court. Other motions were also deined Petitioner JOHNSON by the courts below. When is law protection for Petitioner JOHNSON? According to Lindahl's brief and the five Amici Curiae briefs to Lindahl's case, the Federal Circuit is obstructing justice and violating due process in other cases

to reverse precedents of many decades.

II. A BRIEF SUMMARY OF FACTS

On July 8, 1980, Petitioner JOHNSON was coerced under continuing duress, threats, retaliation, reprisals, harassment, deceit, time-pressure, hostility, adverse actions, sabotage, insults, near-violent acts, prohibited personnel practices, et al, for 13 years as a federal employee at Fort Eustis, Virginia to breakdown of health to retire involuntarily, or dejure, constructively or adversely in continuing violations of congressional intent, of due process, equal protection, property and contractual rights which are protected by the fifth and fourteenth amendments of the U.S. Constitution. The Army provided a most descrutive working environment at Fort Eustis, Virginia which caused

Petitioner JOHNSON'S health breakdown, emotionally and physically; caused continuous and extreme mental agony for 13 years which was tantamont to coercive involuntary retirement, after extensive counselling.

Petitioner JOHNSON'S Army, civilian and military supervisors, investigators, hearing officials, were masters of sabotage, harassment, coercion, insults, subterfuge, unlawful violations as listed herein for 13 years, approved by decisions of the Federal Circuit, the MSPB and the agency. Petitioner JOHNSON was unwillingly hired in July 1967 as an Education Specialist GS1710-09, after 1½ years unlawful delay by the Army. Petitioner JOHNSON applied in February 1966, and was hired 1½ years later, after complaint by Petitioner JOHNSON and after the Army stated falsely that

no vacancies for correspondence writers existed as Educational Specialist. Petitioner JOHNSON was more qualified for the position than many employees hired as writers.

Petitioner JOHNSON'S assigned duties at the Fort Eustis Army Transportation Center were to research, revise, write and produce correspondence courses for home study by military persons and civilians.

So numerous are the specific adverse facts that it is impractical and impossible to list all or many of them in a brief. To try to hold his job at Fort Eustis, Virginia, Petitioner JOHNSON was coerced by the Army continually, intentionally, systematically, unlawfully, unconstitutionally, to file about 12 formal complaints and informal complaints in 13 years, 4 court cases,

enough papers to fill several filing cabinets full of pages now located in the Pentagon and at Fort Eustis, Virginia. However, in 13 years, Petitioner JOHNSON never received complete redress, nor daily protection, nor was he made legally whole. Agency decisions were vague and incomplete.

To research, edit, and write formal complaints, petitioner had to use about 80% to 90% of his off-duty time at night, on weekends, during holidays, sick leave, annual leave, to try to hold his job against Army supervisors who plotted, planned and executed, a never-ending series of sabotage, and torturous experiences against petitioner which accelerated so as to coerce involuntary retirement due to breakdown of health on July 8, 1980. Other writers were provided a completely relaxed en-

vironment in which to work as if at a 20 year social party. Petitioner JOHNSON never aspired to make a single complaint in his life, but desired normal cooperation and coordination by his supervisor and peers. Petitioner JOHNSON was subjected to cruel and unusual sabotage, official harassment and prohibited personnel practices for 13 years, so as to disrupt mental concentration, writer orientation, tranquility and writer production. A few examples are mentioned herein.

Petitioner JOHNSON was unlawfully and maliciously ordered in a near-violent atmosphere in the Army Colonel's office by three supervisors in May 1968 to resign immediately during the 10th month of his probationary year so as to deny him all appeal rights. Petitioner refused to resign, but was emotionally

shocked by the near-violent demeanor of the 4 supervisors. Petitioner JOHNSON was arbitrarily and capriciously transferred from aviation correspondence course writing to water transportation correspondence course writing in July 1968; his twelfth month, so as to sabotage his orientation. He was charged unlawfully, falsely and in violation of all laws, regulations and procedures in his fourteenth month, October 1968, with an adverse action and unlawfully separated from his civil service job at Fort Eustis, Virginia in July 1969. Supervisors never cooperated, but actively sabotaged. Petitioner JOHNSON was coerced through torturous hearing and appeal process for 18 emotionally packed, mentally miserable months to try to regain his job. On 14 December 1971, Petitioner JOHNSON was reinstated due

to petitioner's complaint appeal; however, on the same date 14 December 1971, he was maliciously and knowingly in violation of all laws and regulations immediately RIFed, from GS-11 to GS-05/07, to try to coerce him to resign, into a RIFed GS-07 job for 2½ years. Petitioner JOHNSON was denied his GS-11 rightful job as a correspondence writer, or transfer or promotion to friendly supervisors and was coerced to work under persons who were not qualified to hold the GS-11 job in the RIFed position; all RIFed regulations and procedures were violated. By torturous complaints for 2½ years, Petitioner JOHNSON was unwillingly reinstated by the Army in his GS-11 job in January 1973 as correspondence course writer, after 4 years out of his rightful writing job to work under the same hostile writing supervisors as before

unlawful separation in July 1969.

Petitioner JOHNSON was never made legally whole for the 1½ year delayed hiring, nor for the 4 years in separation and RIF status. The same supervisor became more uncooperative, abusive, isolating, sabotaging, insulting, retalitory, false, harassing, with fanatical zeal to coerce resignation, than before unlawful separation in July 1969.

Petitioner JOHNSON applied for between 20 and 30 transfers or promotions to more friendly supervisors for which he was well qualified, but was never transferred nor promoted to more friendly supervisors. Numerous persons, however, some less qualified, were transferred and promoted at Fort Eustis, Virginia and at Fort Monroe, Virginia. Vacancies were numerous during the Vietnamese War. Supervisors isolated, in-

sulted, retaliated, refused to discuss writings, delayed or refused to critique writings, made deliberately confusing assignments, made obviously unnecessary revisions to delay or sabotage his writings; used first drafts as basis for efficiency ratings, while other writers were allowed 2 to 4 drafts. Supervisors made obvious false statements and perjured statements under oath at hearings, inserted secret written statements in investigative records which were used by the Army as a basis for major decisions, and were always subversively plotting, scheming and tryting to find an "excuse" to bring unlawful charges against Petitioner JOHNSON, with fanatical zeal for 13 years. As a result, petitioner developed emotional and physical health breakdown, trying to protect his career; was coerced on

numerous sick calls, and one year's sick leave without pay, beginning July 1979 and coerced to retire involuntarily in July 1980 from high blood pressure, symptoms of heart attack and major physical operation in September 1980. Retirement was completely against JOHNSON'S voluntary will, because he has, all his life, loved to work with pride, attention to duties and creative concern.

The Army, the MSPB and the Federal Circuit have ignored these facts continually, thereby aiding and abbetting the local supervisors at Fort Eustis, Virginia.

The agency, in addition to the torturous, unlawful, unconstitutional official acts above, conducted investigations in violation of due process; accepted false, perjured, secret statements in investigations; refused to

investigate available evidence; made undocumented decisions; used trickery and subterfuge; subverted, isolated, intimidated expert witnesses; refused to require key witnesses to be present; cut short vital testimony; used phrases and sentences out of context to distort "facts" for decisions; made incomplete or partial decisions; issued vague decisions and generally and specifically, continually, intentionally, systematically, violated due process, equal protection and refused to enforce decisions to provide a desirable working environment, and much more for Petitioner JOHNSON so as to coerce him to involuntary retirement.

Plots, schemes and threats were so extreme that Petitioner JOHNSON was put in continued fear of a possible heart attack or of losing his retirement

annuity based on false charges. Several false charges were traumatically reversed by Petitioner JOHNSON.

THE MSPB VIOLATIONS

The MSPB was created by Congress to protect federal employees; instead, the MSPB helped the agency to destroy Petitioner JOHNSON. In July 1981, the MSPB was in a "hurry" to conduct the unlawfully processed hearing; however, willfully and culpably delayed their own decision, behind more recent cases, nearly three years, as reprisal (A3, A4). The MSPB's own procedures; accepted perjured testimony as basis for decision; violated 5 U.S.C. 7701 and 7703; accepted inaccurate transcript and refused to correct; willfully, erroneously summarized the facts; refused to consider the whole record of 13 years and much more.

The agency also subjected Petitioner JOHNSON to continuing intentional and systematic violations of substantial rights. The MSPB covers up violations by abuse of discretion.

III. ARGUMENT

A. THE FEDERAL CIRCUIT HAS JURISDICTION TO PROTECT THE RIGHTS CONFERRED BY CONGRESS, STATUTES, AND REGULATIONS TO FEDERAL EMPLOYEES.

The Interpretation of congressional intent, 5 U.S.C., Section 8347, 5 U.S.C. Sections 7701 and 7703, and C.F.R. 831-1 (Inst 27) concerning judicial review by the Federal Circuit of involuntary retirement due to Petitioner JOHNSON'S breakdown of health, caused by the Army, raises fundamental constitutional issues that must be resolved by the U.S. Supreme Court. Lindahl v. Office of Personnel Management (83-5954), 718 F.2d. 391, related citations, with five Amici Curiae.

There exists much conflicts of decisions between the U. S. Federal Circuit Courts and the U. S. Court of Appeals for the Federal Circuits over the issue of appellate jurisdiction of decisions made by the MSPB on federal employee cases. Five U. S. Federal Circuit Courts have decided appellate jurisdiction and five have rejected it. The Federal Circuit itself has decided in conflict with its own decisions on the same judicial issue. For example, in Bronger v. Office of Personnel Management, 740 F.2d. 1552, the Federal Circuit accepted jurisdiction; in Lindahl and Petitioner JOHNSON, and other cases, the Federal Circuit denied jurisdiction. Generally, these three cases mentioned above are based on the same facts, laws, regulations and issues. Even the Federal Circuit decision in

Lindahl was divided six to five of eleven judges.

The Federal Circuit decided in Petitioner JOHNSON'S case: "On appeal to this court, petitioner must show that the MSPB was wrong as a matter of law in dismissing his case for lack of jurisdiction or that the facts as determined by the MSPB were not supported by evidence that a reasonable person could find adequate (i.e. "Substantial evidence") to justify its decision that the resignation was voluntary. Section 5 U.S.C. 7703(c). (A1) Petitioner JOHNSON proved that the MSPB was in violation of 5 U.S.C. 7703(c) and other regulations, laws, due process, and equal protection. The MSPB decision which was appealed to the Federal Circuit was:

(a) arbitrary, capricious, an abuse

of discretion or otherwise not in according with law;

(b) obtained without procedures required by law, rules or regulations having been followed (A3, A4); or

(c) unsupported by substantial evidence. Facts were wrongly summarized.

B. THE MSPB VIOLATED DUE PROCESS

The MSPB decided erroneously that Petitioner JOHNSON'S retirement was not involuntary and violated due process. On the contrary, Petitioner JOHNSON documented his involuntary retirement facts, intent and coercion on his Application for Retirement on July 8, 1980 as follows in addition to other evidence over 13 years.

"NOTE"
JESSE J. JOHNSON
APPLICATION FOR RETIREMENT

RE: Section D, Paragraph 1b: my application for retirement does not, in any manner whatsoever, state, nor imply any intent by me to suspend, nullify, ignore, drop, disregard nor declare moot, with or without prejudice, any pending administrative, compensatory claim or legal decision, lawful or constitutional rights, appeal rights, on any Formal Complaints of Discrimination, grievance, federal or state court actions pending on the date of my retirement nor to any such rights to which I may become entitled in the future. I am retiring because of the continuing discriminatory working environment on the job to which I've been subjected by supervisors, et al, for 13 years due to race or sex or both.

JESSE J. JOHNSON
8 July 1980"

When the note was written, appellant had never heard of the term "involuntary retirement", nor prohibited personnel practices and was not told by counselor of some of his basic rights or was wrongly counselled, yet by perjury denied it.

When an employee alleges that his/her retirement is involuntary, it is tantamont to the removal or dismissal action by the agency (Army) and automatically invokes entitlement to an appeal by Petitioner JOHNSON for redress. Title 5 C.F.R., Chapter 75, Part 752, et. seq., and 771. The MSPB therefore violated due process and equal protection when it imposed the burden of proof on Petitioner JOHNSON (5 C.F.R. 1201-56; 5 C.F.R. 1201-118). Retirement Regulation F.P.M. 831-1, Subchapter S11-2 states: "...it is the true substance

of the action(s) (of involuntary retirement) which governs rather than the method followed or terminology used..." Even if Petitioner JOHNSON had voluntarily retired, the Federal Circuit has appellate authority by Congress, and/or 5 U.S.C. 7701 and 7703. The court below has jurisdiction to review all cases appealed from the MSPB as set forth within this petition and in Lindahl. Therefore, the laws and the legal citations cited by the Federal Circuit and the MSPB are grossly misplaced and do not apply.

The 5 U.S.C. 7701(c) and 5 C.F.R. 1201.56(c) (iii) provide "...that in appeals before the MSPB, the agency has the burden of proving that its decisions (or actions) are supported by a preponderance of the evidence". The Army should have shouldered the burden of

proof in this case.

The courts have a duty to decide against agencies which violate constitutional rights. Dunlop v. Backowski, 421 U.S. 560, 567-568 (1972).

In Lindahl, disability due to working environment is one issue; petitioner's health breakdown over 13 years undesirable working environment which coerced petitioner to involuntarily retire is documented evidence which proves jurisdiction. Yet the MSPB denied Lindahl's disability retirement, but contends erroneously that petitioner had a choice to retire for disability or other choices, disregarding the factual, documented evidence. Petitioner is therefore being denied justice.

In Lindahl, the dissenting judges In Banc reasoned that 5 U.S.C., Section 7703(a)(1) provides for review of all

decisions of the MSPB, except discrimination cases. Sections 5 U.S.C. 7701 covers any agency action appealable to the MSPB and all Section 7701 actions are reviewable by the Federal Circuit Court pursuant to Section 7703 and 28 U.S.C. 1295(a)(9). Congress did not state any exceptions to this jurisdiction.

In Lindahl's and the petitioner's case, the Federal Circuit is bound to the presumption of judicial review over agency action. Abbott Laboratories v. Gardner, 387 U.S. 136, 140-141 (1961). Contrary to facts, laws, preponderance of evidence, the Federal Circuit and the MSPB erroneously rejected jurisdiction in Petitioner JOHNSON'S case of involuntary retirement due to the Army's adverse actions and prohibited personnel practices for 13 years.

The Supreme Court has consistently decided that when a federal executive official exceeds statutory authority, it will review. Harmon v. Brucker, 355 U. S. 579 (1958). Such violations are due process and equal protection violations which mandate review by the Federal Circuit under the Dunlop and Harmon principles. In Harmon, the S. Ct. held: "Generally judicial relief is available to one who has been injured by an act of a government official which is in excess to his express or implied powers ..."

5 U.S.C. 7701 and 7703 recognize a right to a retirement annuity for retirement created by Congress. Petitioner JOHNSON was involuntarily retired, therefore, his annuity which is property was taken away from him unlawfully by the Army. The Federal Court decision

of no jurisdiction robs those statutes of their power and life and reduced Petitioner JOHNSON to the status of an unprotected federal employee for 13 years.

The U. S. Supreme Court has long held that federal courts have power of jurisdiction to grant relief wherein an official and agency exceeded authority. American School of Magnetic Hearing v. McAnulty, 187 U. S. 94 (1902); Patterson v. Lamb, 329 U. S. 539, 542 (1947); Bellings v. Truedate, 321 U. S. 542 (1944).

Denial of judicial review by the Federal Circuit contradicts over eighty years of decisions of the U. S. Supreme Court which requires review of actions taken in excess of statutes or in violation of its own regulations. American School of Magnetic Hearing v. McAnulty,

187 U. S. 94 (1902).

Under our system of government, the judiciary is the branch of government with the power to make final decisions on statutory and constitutional meaning.

The Congress passed the Administrative Procedures Act in 1946 (5 U.S.C. 551-706). It provided basic judicial review to any person, "suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute." 5 U.S.C. 702, Abbott Laboratories v. Gardner, 387 U. S. 136.

JOHNSON suffered continuing, intentional, emotional and systematic wrongs between July 1967 and July 1980 as a civil service employee.

A hearing before the MSPB is a De Novo hearing. Shannon v. U. S. Civil Service Commission, 621 F.2d. 1030, 1031

(9th Cir. 1980); Doe v. Hampton, 566 F.2d. 265, 272 (D.C. Cir. 1977). The MSPB violated Petitioner JOHNSON'S due process and equal process rights based on only part of the record involved; refused to consider the whole record of 13 years.

The hearing must not be a rubber stamp one, but must concern itself with the record as a whole. Kowal v. United States, 412 F.2d. 867, 870 (ct. cl.) (1969). The Federal Circuit and the MSPB considered only a part of Petitioner JOHNSON'S record, primarily the last 2 of 13 years.

The Supreme Court will give judicial protection against unlawful agency action to rights conferred by Congress. Leedom v. Kyne, 385 U. S. 184, 190 (1958).

C. CONGRESSIONAL INTENT NOT OBEYED

The adverse effect of the Federal Circuit Court's denial decision prevents an entire class of citizens from receiving judicial protection from violations by agencies and the MSPB, Lindahl v. OPM 718 F.2d. 391. The decision allows agencies depotic powers in violation of the U. S. Constitution, if denied review.

The Federal Circuit Court's interpretation of 5 U.S.C., Section 7703 and 28 U.S.C. Section 1295(a)(9) is in conflict with the broader principles that the courts will not construe an act which runs counter to the broad goals that Congress seeks to achieve.

Congress passed the Civil Service Reform Act of 1979 to correct abuses of federal employees' rights, so prevalent for many years, which denied peti-

tioner for 13 years due process and equal protection by the agency and breakdown of health.

When Congress passed the Federal Court's Improvement Act of 1982, creating the U. S. Court of Appeals for the Federal Circuit, it intended uniform decisions in all Civil Service matters by authorizing review of all MSPB, except discrimination, eliminating "inconsistent decisions on the same issues." S. Rep. No. 275, 97th Cong. 2d. Sess., 2 (1981) reprinted in 1982, U. S. Code. Cong. and Ad news 2, 3, 12, 13. The Federal Circuit Court's denial of judicial review decision denies federal employees this right.

The Federal Court Improvement Act of 1982 states that, "...the Federal Circuit shall have exclusive jurisdiction...of any appeal from...the MSPB

pursuant to Section 7703(b)(1)(c)(1)(2)(3)(d) of Title 5."

D. PROPERTY RIGHTS AND CONTRACTUAL RIGHTS WERE VIOLATED

Petitioner JOHNSON has a vested property right in his federal employment that entitles him to due process and equal protection rights for continued employment until voluntarily retired. Petitioner was involuntarily retired, as documented on his Application for Retirement. Petitioner was contributing a part of his wages to a Civil Service Retirement Fund. The courts have jurisdiction to protect this property right. Leedom v. Kyne, 358 U. S. 184 (1958). Dismuke v. U. S. 297 U. S. 167 (1936).

Petitioner also has contractual rights in retirement (voluntary) benefits as well as continued employment. Lynch v. U. S. 292, U. S. 571, 579-580 (1934).

Petitioner's property rights and contractual rights were violated when petitioner was coerced involuntarily to retire due to breakdown of health and other continuing violations. No Army supervisor nor investigative authority would take firm command action to protect petitioner's property and contractual rights; instead, they aided, processed and abbetted. The Army's redress program, system and procedures were completely ineffective.

Procedural due process prohibits deprivation of liberty and property. Board of Regents v. Roth, 408 U. S. 564, 569 (1972); Goldberg v. Kelly 397 U. S. 254, 262-263 (1970); United States v. Clark, 445 U. S. 23, 34 (1980).

The U. S. Supreme Court in 1889 decided that all citizen's liberty and property are protected by the 14th

Amendment of the U. S. Constitution in Dent v. the State of West Virginia 129, 114, 9 S. Ct. 231 32 L. Ed. 623 (1889). Petitoner's property as a civil service federal employee is his honorable services as a federal employee and good health to remain employed.

E. STATUTES WERE VIOLATED

5 U.S.C., Section 7703(b)(1) states "...a petition to review a final order or final decision of the Board shall be filed in the U. S. Court of Appeals for the Federal Circuit." It covers any appeal from final orders of the MSPB, including retirement issues...Bronger v. Office of Personnel Management (740 F.2d. 1552 Federal Circuit 1984).

The former Civil Service Commission regulations for retirement and adverse actions under 5 C.F.R., Part 772 (1978) were replaced by the law under 5 U.S.C., Section 7701 which codified the proce-

dures used by the MSPB in hearing appeals. Neither legislative history nor statutes indicate that involuntary or voluntary retirement decisions were to be excluded from appellate jurisdiction by the Federal Circuit Court.

The Federal Court Improvement Act of 1982 eliminated the need for prolonged and duplicative reviews by the federal district courts and again by federal appellate courts, creating uniformity and eliminating a waste of judicial resources. Polcover v. Secretary of the Treasurer, 477 F.2d. 1223, 1225, (D.C. Cir. 1973) Cert. denied 414 U. S. 1001 (1973). Petitioner suffered continually under the former civil service and court procedures for 13 years.

If Congress had intended to foreclose all judicial review by the Federal Circuit Court, it could have used the finality clauses as in the veteran's

benefits statutes: "No other official or court of the U. S. shall have power or jurisdiction to review such actions" 38 U.S.C. 211(a). The Federal Circuit errored when it rejected jurisdictional review of petitioner's case.

F. THE MSPB APPLIED THE WRONG LAWS AND REGULATIONS

a. The Merit Systems Protection Board applied the wrong laws; erroneously summarized facts; abused discretion; and violated its own procedures (A3, A4).

b. The Board should have applied the adverse action law as shown in Title 5 C.F.R., Chapter 75, Part 752, and/or 5 U.S.C., Section 7701 et. seq. (annoted); violated due process; the agency should have shouldered the burden of proof.

c. F.P.M. 831-1 (Inst 30) February 29, 1980, Subchapter S11, Paragraph S11-2a, Meaning of Involuntary

defines the term involuntary separation, as occurred in petitioner's appeal. 'The term involuntary separation means, any separation against the will...of the employee..." "Note, however, that whether a separation is involuntary depends upon all the facts in a particular case; it is the true substance of the action which governs rather than the method followed or terminology used..." This is quoted in many MSPB decisions to show involuntariness; and however, was not applied to petitioner's case.

For example, the MSPB decision of James O. Matthews, Jr. versus Office of Personnel Management (Docket No. AT083109004, December 1980, page 20) is in favor of (a) which states: "...it is the true substance of the action (of retirement) which governs rather than the method followed or terminology used..."

Matthews had retired optionally as appellate JOHNSON did. The MSPB decisions are conflicting with its own decision.

The MSPB ignored laws and regulations relating to congenial cooperation, training and orientation by supervisors for civil service employees. Appellate was denied this orientation training and cooperation and subjected to sabotage and coercion continuously in violation of regulation for 13 years.

The MSPB misapplied the Civil Service Reform Act, Public Law 95-454, October 13, 1978 (Chapter 23, Title 5), MSPB, Section 2302, Prohbited Personnel Practices (b)(1)(c) as quoted below:

"c. The head of each agency shall be responsible for the prevention of prohibited personnel practices, for the compliance with and enforcement of applicable civil service law, rules and regulations, and other aspects of personnel management. Any individual to whom the head of an agency delegates authority for personnel management, or for any aspect thereof, shall be simi-

larly responsible within the limits of the delegation."

The Civil Service Regulations for Petitioner JOHNSON'S protection were continually, intentionally and systematically violated.

CONCLUSION

For the foregoing reasons, the decision below should be reversed.

JESSE J. JOHNSON
Representative Pro Se

CERTIFICATE OF SERVICE

I, JESSE J. JOHNSON, hereby certify that (a) true and correct copy of the foregoing has been deposited in the U.S. mail prepared on the 20th day of March, 1985, to Attorney Kathleen A. Flynn, Department of Justice, Civil Division, Commercial Litigation Branch, Room 734, 550 11th Street, NW, Washington, D.C. 20530.

JESSE J. JOHNSON
Representative Pro Se

APPENDIX 1

NOTE: This opinion will not be published in a printed volume because it does not add significantly to the body of law and is not of widespread legal interest. It is a public record. It is not citable as precedent. The decision will appear in tables published periodically.

United States Court of Appeals
for the Federal Circuit

JESSE J. JOHNSON)
Petitioner,)
)
v.)
)
MERIT SYTEMS)
PROTECTION BOARD)
Respondent.)

Appeal No. 84-1457.

DECIDED: November 13, 1984

Before RICH, BENNETT, and BISSELL, Circuit Judges.

RICH, Circuit Judges.

DECISION

Petitioner appeals from the May 11, 1984, Final Opinion and Order (Docket No. PH0758110406) of the Merit Systems Protection Board (MSPB) which dismissed, for lack of jurisdiction, petitioner's appeal from his alleged involuntary retirement by the Department of the Army

(Army). We affirm.

OPINION

We have carefully considered the brief submitted by petitioner and have reviewed his exhibits and the excerpts from his testimony before the presiding official. The MSPB did not reach the merits of petitioner's allegations that he is entitled to back pay and reinstatement, because it held that petitioner had not first met his burden of demonstrating that the MSPB had jurisdiction over his case, i.e., that his retirement had been involuntary.

Employee resignations are presumed to be voluntary, and voluntary separations are not actions appealable to the MSPB. Christie v. United States, 518 F.2d. 584, 587-88. This presumption requires a petitioner to come forward with sufficient evidence at the MSPB

hearing to establish that the resignation was involuntary. Id. at 587.

On appeal to this court, petitioner must show that the MSPB was wrong as a matter of law in dismissing his case for lack of jurisdiction, or that the facts as determined by the MSPB were not supported by evidence that a reasonable person would find adequate (i.e., "substantial" evidence) to justify its decision that the resignation was voluntary. See 5 U.S.C. 7703(c).

Petitioner alleges that the MSPB's summary of facts is "most inaccurate and is deliberately, arbitrarily and capriciously made." Petitioner bases his arguments partly upon a note attached to his application for retirement stating that his retirement was due to discrimination, and asserting his intention to retain any appeal or other rights to

which he was entitled. Additionally, petitioner contends that the Army's harassment and hostility over a 13-year period created a state of physical disability tantamount to coercion in effecting his retirement.

The presiding official found other evidence in the record to support a finding that petitioner's retirement had been voluntary. This includes findings that petitioner's physician recommended his retirement, that petitioner knew of his right to apply for disability retirement, that petitioner was scheduled for surgery, and that petitioner initiated the retirmeent application while in a leave-without-pay category rather than requesting an extension of leave. While recognizing petitioner's assertions of discrimination against himself, and noting petitioner's evi-

dence intended to show discrimination against other employees, the presiding official considered all the evidence but concluded that petitioner's resignation was voluntary. The discrimination issue was wiaved, however, in this court.

In Leone v. United States, 204 Ct. Cl. 334, 339 (1974), the Court of Claims (one of this court's predecessors) held that the voluntariness of retirement is vitiated only when a resignation is submitted under duress, and alleged duress must meet a tripart test:

> ***(1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternative; and (3) that said circumstances were the result of coercive acts of the opposite party. ***Fruhauf Southwest Garment Co. v. United States, 111 F. Supp. 945, 951, 126 Ct. Cl. 51, 62 (1953).

See also, Christie, 518 F.2d. at 587. The presiding official found that "(t)he circumstances surrounding the appellant's

retirement allowed for other alternatives. For example the appeallant could have returned to work or requested a further extension of leave without pay." On this basis, and in view of the evidence presented, the presiding official found that petitioner had not met his burden of demonstrating that his retirement had been involuntary.

On this appeal, petitioner has not demonstrated reversible error in the MSPB's determination.

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 Madison Place, N.W.
Washington, D.C. 20439

George E. Hutchinson
Clerk

Tel: 633-6550
Area Code 202

January 15, 1985

Mr. Jesse J. Johnson
41 Cornelius Drive
Hampton, Virginia 23666

RE: Jesse Johnson v. Merit Systems Protection Board
Appeal No. 84-1457

Dear Mr. Johnson:

Receipt is acknowledged of the "Motion for Continuance in Petition for Rehearing or Rehearing In Ban or Directed Verdict for Appellant."

The docket of this appeal indicates that the Court on January 9, 1985, denied your petition for rehearing and declined the suggestion for rehearing in banc. Accordingly, this is a final action of this Court and further review of this case must be before the U.S. Supreme Court by means of a petition for writ of certiorari.

I am enclosing an informational sheet concerning the filing of petitions.

Very truly yours,

Enclosure
GEH:bam

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT
717 MADISON PLACE N.W.
WASHINGTON, D.C. 20439
APPEAL NO. 84-1457
DATE
SEPTEMBER 4, 1984
INFORMAL BRIEF
MOTION FOR DIRECTED VERDICT
BY
JESSE J. JOHNSON
VS
DEPARTMENT OF THE ARMY
PETITION FOR JUDICIAL REVIEW
FROM THE MERIT SYSTEM PROTECTION BOARD
OPINION AND ORDER NO. PH 075 2811 0406

1. It is hereby moved that JESSE J. JOHNSON, Pro Se representative, that this honorable court grant decision by directed verdict for the following reasons:

a. The Merit Systems Protection Board rushed appellant, without necessity, unreasonable in violation of due process and equal protection guaranteed by the fifth and fourteenth amendments to the U.S. Constitution, as set forth in appellant's Exhibit #17 attached, entitled: Appellant's Motion to Require the Presiding Official to Clarify Exactly What Action is Scheduled to be heard on July 16 and 17, 1981 and in his Petition for Judicial Review.

b. Appellant was allowed only one hour during the lunch hour on 16 July 1981 to prepare his defense after the confused issues were decided on by the MSPB. Appellant should have been allowed at least 10 or 15 days or more to research, prepare, decide on expert witnesses, regular witnesses, technical advisors, and/or documents, depositions, statements, etc., prior to the hearing, (Exhibits and Hearing Transcript on page 68-76).

c. This unnecessary rushing was to the advantage of the agency's well-trained legal staff which had knowingly customarily, intentionally, continuingly, coercively and systematically aided, abbetted and supported local and agency officials in the pentagon to violate appellant's due process, equal protection and substantial rights for 13 years. The agency knowingly and deliberately

violated appellant's substantial rights for 13 years; thereby causing appellant's breakdown in health, mentally, emotionally and physically, and involuntary retirement. Appellant would still be employed if the agency had protected his substantial rights for 13 years.

d. Appellant has reasons to believe that there was exparte communication on this MSPB case and on other cases in the past.

e. The Merit Systems Protection Board held its hearing on 16 and 17 July 1981 yet culpably delayed decision until 11 May 1984, nearly 3 years. It could have been deliberate delay of appellant's petition for review decision.

2. Subjecting appellant to such unreasonable rush to a hearing, but nearly 3 years to final decision aids, abetts and extends without justifiable cause appellant's continuous mental agony, emotional distress and physical breakdown, and reduces appellant to an unprotected status as a citizen in the same manner as the agency did for 13 years.

3. It is moved that this honorable court consider as legal citations all cases in law, known and unkown to this pro se representative, and that any other basis unknown by appellant be considered in this motion.

JESSE J. JOHNSON
Representative Pro Se
41 Cornelius Drive
Hampton, VA 23666
(804) 838-1244

cc: Defendent's Representative

APPENDIX 4

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD
PHILADELPHIA OFFICE
U. S. CUSTOMHOUSE, ROOM 501
SECOND AND CHESTNUT STREETS
PHILADELPHIA, PENNSYLVANIA 19106

JESSE J. JOHNSON
VERSUS
DEPARTMENT OF THE ARMY
DOCKET NO. PH07528110406

APPELLANT'S MOTION TO REQUIRE THE PRESIDING OFFICIAL TO CLARIFY EXACTLY WHAT ACTION IS SCHEDULED TO BE HEARD ON JULY 16 AND 17 1981

1. Your decision of June 20, 1981, states that you will conduct a preliminary conference prior to commencement of hearing proceedings at Fort Eustis, Va.

2. You also state that at the preliminary conference, you will entertain the appellant's request to have the appeal adjudicated on the documentary record and that appellant's motion to cancel the show cause hearing scheduled for 16 and 17 July is denied.

3. Why can't your decision to adjudicate on documentary record be made by mail prior to the hearing? Is the appellant and/or the agency supposed to have witnesses on standby under the circumstances of transfer and retirement? Shall you decide by surprise at the preliminary conference that certain witnesses should be present? Are the documents of the appellant and/or the agency supposed to be made available? If so, which documents? Several filing cabinets

full exist.

4. In accordance with 5 C.F.R., Section 1201.55(b), the agency has the right to object to appellant's motion; however the C.F.R. does not state that the objection should be made at the time of the preliminary conference. Your procedure to have agency respond at the hearing constitutes surprise for appellant. Your own procedures state that the agency and appellant should coordinate to a maximum extent prior to the hearing.

5. It is also not clear from your decision whether appellant must prepare for a show cause hearing and a primary hearing or both? Each proceeding requires specific and massive preparation in a cause which is 13 years old.

6. It is also not clear to appellant as to which documents and/or witnesses you are requiring in addition to documents already presented into evidence?

7. Your surprise procedures are allowing the agency an opportunity to prepare surprises; however, appellant must extemporaneously prepare for a show cause or primary hearing at the preliminary conference.

8. You did not state why you denied appellant's motions to consider the cause based on documentation by mail.

9. The appellant's interpretation of 5 U.S.C., Section 7701 is that the appellant has a right to a hearing;

however MSPB has the duty to expedite the hearing. See page 186 of 5 U.S.C. (annotated) Section 7701, which states that evidence prior to the hearing should be made available to each side:

> "Aim of Civil Service Commission (now Merit Systems Protection Board) regulations providing for submission of relevant evidence to its representatives is to expedite hearings by compiling relevant evidence and making it available for scrutiny by Commission, as well as contending parties, prior to actual hearing. Garcia v. Schwartz, D. C. Colo. 1968, 283 F. Supp. 157."

See also note 21 on the same page:

> "In proceedings before the Civil Service Commission (now MSPB) affidavits, letters and memoranda are received and given such weight as they seem to deserve. Kaers v. U.S. 1966, 175 ct. cl. 111."

10. The agency is required to produce witnesses if under agency control. If the agency can make witnesses previously named available on 16 and 17 July 1981 at Fort Eustis for a possible hearing, it is requested that they do so.

11. Your decisions are not clear and throw the burden of uncertain preparations of his cause upon the appellant. The appellant objects to surprise procedures and violations of due process.

JESSE J. JOHNSON
Appellant Pro Se

APPENDIX 5

#7701. Appellate procedures

(a) An employee, or applicant for employment, may submit an appeal to the Merit Systems Protection Board from any action which is appealable to the Board under any law, rule, or regulation. An appellant shall have the right--

(1) to a hearing for which a transcript will be kept; and

(2) to be represented by an attorney or other representative.

Appeals shall be processed in accordance with regulations prescribed by the Board.

(b) The Board may hear any case appealed to it or may refer the case to an administrative law judge appointed under section 3105 of this title or other employee of the Board designated by the Board to hear such cases, except that in any case involving a removal from the service, the case shall be heard by the Board, an employee experienced in hearing appeals, or an administrative law judge. The Board, administrative law judge, or other employee (as the case may be) shall make a decision after receipt of the written representations of the parties to the appeal and after opportunity for a hearing under subsection (a)(1) of this section. A copy of the decision shall be furnished to each party to the appeal and to the Office of Personnel Management.

(c)(1) Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision--

(A) in the case of an action based on unacceptable performance described in section 4303 of this title, is supported by substantial evidence, or

(B) in any other case, is supported by a preponderance of the evidence.

(2) Notwithstanding parapgraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee or applicant for employment--

(A) shows harmful error in the application of the agency's procedures in arriving at such decision;

(B) shows that the decision was based on any prohibited personnel practice described in section 2302(b) of this title; or

(C) shows that the decision was not in accordance with law.

(d)(1) In any case in which--

(A) the interpretation or application of any civil service law, rule, or regulation, under the jurisdiction of the Office of Personnel Management is at issue in any proceeding under this section; and

(B) The Director of the Office of Personnel Management is of the opinion that an erroneous decision would have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office;

the Director may as a matter of right intervene or otherwise participate in that proceeding before the Board. If the Director exercises his right to participate in a proceeding before the Board, he shall do so as early in the proceeding as practicable. Nothing in this title shall be construed to permit the Office to interfere with the independent decision-making of the Merit Systems Protection Board.

(2) The Board shall promptly notify the Director whenever the interpretation of any civil service law, rule, or regulation under the jurisdiction of the Office is at issue in any proceeding under this section.

APPENDIX C

5 U.S.C. 7703 EXTRACT

#7703. Judicial review of decisions of the Merit Systems Protection Board

(a)(1) Any employee or applicant for employment adversely affected or aggrieved by a final order or decision of the Merit Systems Protection Board may obtain judicial review of the order or decision.

(2) The Board shall be the named respondent in any proceeding brought pursuant to this subsection, unless the

employee or applicant for employment seeks review of a final order or decision issued by the Board under section 7701. In review of a final order or decision issued under section 7701, the agency responsible for taking the action appealed to the Board shall be the named respondent.

(b)(1) Except as provided in paragraph (2) of this subsection, a petition to review a final order or final decision of the Board shall be filed in the United States Court of Appeals for the Federal Circuit. Notwithstanding any other provision of law, any petition for review must be filed within 30 days after the date the petitioner received notice of the final order or decision of the Board.

(2) Cases of discrimination subject to the provisions of section 7702 of this title shall be filed under section 717(c) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16(c)), section 15(c) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 633a(c)), and section 16(b) of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 216(b)), as applicable. Notwithstanding any other provision of law, any such case filed under any such section must be filed within 30 days after the date the individual filing the case received notice of the judicially reviewable action under such section 7702.

(c) In any case filed in the United States Court of Appeals for the Federal Circuit, the court shall review the record and hold unlawful and

set aside any agency action or conclusions, found to be--

(1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) obtained without procedures required by law, rule, or regulations having been followed; or

(3) unsupported by substantial evidence;

except that in the case of discrimination brought under any section referred to in subsection (h)(2) of this section, the employee or applicant shall have the right to have the facts subject to trial de novo by the reviewing court.

(d) The Director of the Office of Personnel Management may obtain review of any final order or decision of the Board by filing a petition for judicial review in the United States Court of Appeals for the Federal Circuit if the Director determines, in his discretion, that the Board erred in interpreting a civil service law, rule, or regulation affecting personnel management and that the Board's decision will have a substantial impact on a civil service law, rule, regulation, or policy directive. If the Director did not intervene in a matter before the Board, the Director may not petition for review of a Board decision under this section unless the Director first petitions the Board for a reconsideration of its decision; and such petition is denied. In addition to the named respondent, the

Board and all other parties to the proceedings before the Board shall have the right to appear in the proceedings before the Court of Appeals. The granting of the petition for judicial review shall be at the discretion of the Court of Appeals.

(As amended Pub.L. 97-164, Title I, #144, Apr. 2, 1982, 96 Stat. 45.)

APPENDIX 7
EXTRACT

5 U.S.C. 8334

#8834. Deductions, contributions, and deposits

(a)(1) The employing agency shall deduct and withhold 7 percent of the basic pay of an employee, 7½ percent of the basic pay of a Congressional employee, a law enforcement officer, and a firefighter, and 8 percent of the basic pay of a Member. An equal amount shall be contributed from the appropriation or fund used to pay the employee or, in the case of an elected official, from an appropriation or fund available for payment of other salaries of the same office or establishment. When an employee in the legislative branch is paid by the Clerk of the House of Representatives, the Clerk may pay from the contingent fund of the House the contribution that otherwise would be contributed from the appropriation or fund used to pay the employee.

(2) The amounts so deducted and withheld together with the amounts so contributed, shall be deposited in the Treasury of the United States to the credit of the Fund under such procedures as the Comptroller General of the United States may prescribe. Deposits made by

an employee or Member also shall be credited to the Fund.

(b) Each employee or Member is deemed to consent and agree to these deductions from basic pay. Notwithstanding any law or regulation affecting the pay of an employee or Member, payment less these deductions is a full and complete discharge and acquittance of all claims and demands for regular services during the period covered by the payment, except the right to the benefits to which the employee or Member is entitled under this subchapter.

5 C.F.R. 1201.56 APPENDIX 8 EXTRACT

#1201.56. Burden and degree of proof, affirmative defenses.

(a) Burden and degree of proof. (1) Agency: Under 5 U.S.C. 7701(c)(1) the agency must be sustained by the Board if:

(i) It is brought under 5 U.S.C. 4303 and is supported by substantial evidence; or

(ii) It is brought under any other provision of law or regulation and is supported by a preponderance of the evidence.

(2) Appellant: The appellant shall have the burden of proof as to issues of jurisdiction and timeliness of filing.

(b) Affirmative defenses of the appellant. Under 5 U.S.C. 7701(c)(2), the Board is required to overturn the action of the agency even when the agency has met the evidentiary standard set forth in subsection (a), above, in any case

where the appellant:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Demonstrates that the decision was based on any prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) Shows that the decision was not in accordance with law.

(c) Definitions. For purposes of this section, the following definitions shall apply:

(1) Substantial evidence. That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as adequate to support a conclusion that the matter asserted is true.

(2) Preponderance of the evidence: That degree of relevant evidence which a reasonable mind, considering the record as a whole, might accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

(3) Harmful error: Error by the agency in the application of its procedures which, in the absence of cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the appellant to show that based upon the record as a whole the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

APPENDIX 8, 9, 10, 11

(d) Moving forward. In cases where action shall present its case first. The appellant may then present evidence.

AP 8

EXCERPT
MSPB REGULATION
5 C.F.R. Judicial Review
Section 1201.118 Judicial Review

Any employee or applicant for employment adversely affected by a final order or decision of the Board may obtain judicial review under the provisions of 5 U.S.C. 7703.

AP 9

GRIEVANCE SYSTEM
5 C.F.R. Part 771 AGENCY
Section 771.205 Grievance Coverage

Except as provied in #771.206(c), this part applies to any matter of concern or dissatisfaction relating to the employment of an employee which is subject to the control of agency management, including any matter on which an employee alleges that coercion, reprisal, or retaliation has been practiced against him or her.

AP 10

EXCERPT
5 C.F.R. ADMINISTRATIVE
PERSONNEL (Jan. 1, 1980)
PART 831 RETIREMENT

Subpart E--Eligibility for Retirement
Section 831.501. Time for filing applications

(a) An employee or Member who is retiring on account of age or optional retirement may file an application for annuity with OPM within 30 days before, on, or at any time after he reaches the

requisite retirement age. When the department, or agency shall submit it immediately to OPM with a photo copy of Form 2806 or a complete resume of the applicant's service history, salary, and retirement deductions.

(b) An employee or Member who is retiring on account of voluntary or involuntary separation from the service may file an application for immediate or deferred annuity only after his separation from the service may file an application for immediate or deferred annuity only after his separation from the service or not more than 30 days before the commencing date of his annuity.

APII

28 U.S.C. 1295

(a) The United States Court of Appeals for the Federal Circuit shall have exclusively jurisdiction--

(9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5 U.S.C. #7703(b)(1), (d);